

**STATE OF CALIFORNIA  
REGIONAL WATER QUALITY CONTROL BOARD  
LOS ANGELES REGION**

**IN THE MATTER OF:**

<b>MERONA ENTERPRISE, INC (MERONA)</b>	)	<b>Complaint No. R4-2004-0050</b>
<b>9550 FIRESTONE BLVD. SUITE 105</b>	)	<b>For</b>
<b>DOWNEY, CA 90241</b>	)	<b>Administrative Civil Liability</b>

**MERONA IS HEREBY GIVEN NOTICE THAT:**

1. MERONA is alleged to have violated requirements contained in State Water Resources Control Board Order No. 99-08-DWQ [NPDES Permit No. CAS000002] (hereinafter General Permit) for which the Regional Water Quality Control Board, Los Angeles Region (Regional Board) may impose civil liability under §13385 of the California Water Code (CWC). The General Permit regulates discharges of storm water associated with construction activities.
2. A hearing concerning this Complaint will be held before the Regional Board or Regional Board Hearing Panel (Hearing Panel) within ninety days after service of this Complaint on MERONA. MERONA will be notified at least ten days in advance of the date, time and place of the hearing. MERONA or its representative will have an opportunity to appear and be heard, and to contest the allegations in this Complaint and the imposition of civil liability by the Regional Board.
3. The Regional Board will consider whether to affirm, reject or modify the proposed administrative civil liability or to refer the matter to the Attorney General for recovery of a greater judicial civil liability.
4. In the event that MERONA fails to comply with the requirements of this Complaint, the Executive Officer is authorized to refer this matter to the Office of the Attorney General for enforcement.

**THE FOLLOWING FACTS ARE THE BASIS FOR THE ALLEGED VIOLATIONS IN THIS MATTER:**

**BACKGROUND**

5. Storm water runoff from MERONA's 7-acre construction site, WDID No. 4 19 C 316360, located at 6218 Hooper Avenue, City of Los Angeles is regulated under the General Construction Permit. On August 21, 2001, the State Board processed MERONA's Notice

of Intent (NOI), signed by Mr. Bobby Ouellette, to comply with the terms of the General Permit.

6. In its NOI, MERONA stated that grading would be completed in October 2001, and that project completion would occur by December 2001.

#### ALLEGED VIOLATIONS

7. MERONA is alleged to have violated the following 3 provisions of the General Permit:
  - I. SECTION A: STORM WATER POLLUTION PREVENTION PLAN.
    1. Objectives. MERONA failed to develop and implement a Storm Water Pollution Prevention Plan (SWPPP) for the entire 7- acre site, to meet requirements in of Sections A.1 through C.10.
  - II. SECTION A: STORM WATER POLLUTION PREVENTION PLAN.
    8. Sediment Control. MERONA failed to implement sediment control along the construction site's perimeters and at all operational inlets to the storm drain system; and
  - III. SECTION A: STORM WATER POLLUTION PREVENTION PLAN.
    11. Maintenance, Inspection, and Repair. MERONA failed to maintain and repair the construction site's Best Management Practices (BMPs).
8. On May 6, 2003, during a storm water inspection of MERONA's Hooper Ave. construction project, Regional Board staff observed:
  - a. §A.3- (SWPPP Availability): MERONA's SWPPP was not retained on the construction site during working hours while the site was under construction.
  - b. §A.8- (Sediment Control): BMPs were not effectively implemented at all appropriate locations along the site perimeter and at all operational inlets to the storm drain system. Sediment had been discharged from the site into the storm drain on Hooper Street. Sediment had been tracked onto Compton Avenue, east of the site.
  - c. §A.11- (Maintenance, Inspection, and Repair): Site BMPs were not maintained and repaired at the storm drain on the East Eagle Avenue. Sediment and gravel were observed on the street next to the storm drain due to broken sandbags.
9. On May 21, 2003, a Notice of Violation (NOV) was mailed to MERONA. The NOV cited the Permit violations observed by the Regional Board staff during the May 6, 2003 inspection. The NOV stated that to come into compliance with the provisions of the Permit, MERONA was required to:

1. "By May 30, 2003 submit an updated NOI with Pertinent changes of information to State Water Resources Control Board and send a copy of NOI to Regional Board to the attention of Mr. Alex Alimohammadi."
  2. "By June 16, 2003, submit a SWPPP that meets the standards outlined in Section A.1 through C.10 of the Permit and contains a schedule for the implementation of sediment control BMPs to Mr. Alex Alimohammadi"
  3. "Immediately implement appropriate BMPs in accordance with the schedule in your SWPPP to address all deficiencies discussed above. Submit A written certification to the regional Board (to the attention of Mr. Alex Alimohammadi), within 14 days after implementing your SWPPP, stating that the above measures have been effectively implemented and are being monitored."
  4. "Immediately pay the annual fee of \$700 to the State Water Resources Control Board."
10. On September 22, 2003 Regional Board staff left a phone message for Mr. Bobby Ouellette of MERONA that the response to the NOV was overdue.
  11. On September 23, 2003, staff tried again to contact Mr. Ouellette and again left a voice message for him.
  12. On September 25, 2003, Mr. Tim Mc Nair, the site foreman called the staff. Staff reiterated the importance of responding to the NOV. Mr. Mc Nair stated that he would follow-up on the NOV and would inform the staff. On the same day, Mr. Louis Armona, who identified himself as MERONA's president, called the staff and stated that he was unaware of an NOV sent to MERONA. Staff informed Mr. Armona that the NOV was mailed on May 21, 2003 to MERONA's address on the NOI and that Ms. Jayme Macias, a MERONA representative, had received the NOV and had signed the return receipt on May 27 2003. Mr. Armona asked the staff for a copy of the NOV to be faxed to him. Staff faxed a copy of the NOV to Mr. Armona on September 25, 2003.
  13. On February 17, 2004, staff made a follow up inspection at the site. During the inspection, Regional Board staff met with MERONA's representative, Mr. Carlos Losada. Mr. Losada submitted a SWPPP to staff that was incomplete and was only for a 2.2-acre area. Staff discussed the following with Mr. Losada:
    - a. §A.1 (SWPPP Objectives): MERONA did not develop and implement a SWPPP to address the specific circumstances for the construction site. The SWPPP submitted to the staff was not for the entire 7-acre project and did not include all the required Sections A.1 through C.10 of the Permit.
    - b. §A.8- (Sediment Control): BMPs were not effectively implemented at all appropriate locations along the site perimeter and at all operational inlets to the storm drain system. Sediment had been discharged into the on site storm drains.

14. On March 16, 2004 a second NOV was mailed to MERONA. The NOV cited the Permit violations observed by the Regional Board staff during the February 17, 2004 follow up inspection. The NOV stated that to come into compliance with the provisions of the Permit, MERONA was required to:
  1. "Immediately submit a SWPPP that meets the standards outlined in Section A.1 through C.10 of the Permit, and that contains a schedule for the implementation of the BMPs."
  2. "Immediately implement appropriate BMPs in accordance with the new schedule in your SWPPP to address all deficiencies discussed above."
  3. "Submit a written certification to the regional Board (to the attention of Mr. Alex Alimohammadi), within 14 days after implementing your SWPPP, stating that the above measures have been effectively implemented and are being monitored. Include in your submittal pictures of the BMPs implemented."
15. To date, no response to the NOV has been received from MERONA.

#### **POTENTIAL CIVIL LIABILITY**

16. CWC § 13385(a)(2) provides that any person who violates waste discharge requirements issued pursuant to the Federal Clean Water Act shall be civilly liable. CWC § 13385(c) provides that civil liability may be administratively imposed by a regional board in an amount not to exceed ten thousand dollars (\$10,000) for each day the violation occurs.
17. Pursuant to § 13385(c)(1) of the CWC, MERONA is civilly liable for the sum of \$10,000 per day per violation of its General Permit. The total potential maximum civil liability assessment for the violations described herein is \$12,630,000 as set forth in the following chart:

**POTENTIAL MAXIMUM PENALTY**

<b><i>Penalty Category</i></b>	<b>Duration</b>	<b>Calculation</b>	<b>Total</b>
§A.1- (SWPPP Objectives)	404 days (5/21/03-6/28/04)	(421 days) X (\$10,000/day)	\$4,210.000
§A. 8-(Sediment Control)	404 days (5/21/03-6/28/04)	(421 days) X (\$10,000/day)	\$4,210.000
§A.11-(Maintenance, Inspection, and Repair)	404 days (5/21/03-6/28/04)	(421 days) X \$(10,000/day)	\$4,210.000
<b>POTENTIAL MAXIMUM ACL</b>			<b>\$12,630,000</b>

18. Pursuant to the CWC §13385 (e), the Regional Board has considered the following factors in determining the amount of civil liability to be imposed:

a. Nature, circumstances, extent, and gravity of the violations:

MERONA failed to develop and implement a SWPPP that identified all pollutant sources onsite, described and implemented BMPs according to a time schedule, and provided a maintenance schedule for post-construction BMPs. Sediment controls to stabilize disturbed areas throughout the construction site were not implemented. BMPs implemented were not maintained and repaired. MERONA did not respond to the due date of June 16, 2003 specified in the NOV mailed on May 21, 2003 to MERONA by the Regional Board. A second NOV was sent to MERONA on March 16, 2004. The SWPPP and the certification submitted to the Regional Board staff by MERONA's representative was incomplete and was not for the entire 7-acre site. MERONA did not respond to the NOV dated March 16, 2004. Therefore, a reduction from the maximum civil liability is not warranted.

b. Susceptibility of the discharge to cleanup or abatement:

The discharge of construction pollutants (i.e. sediment) is not easily cleaned-up once it has been released into the storm drain. Therefore, a reduction from the maximum civil liability is not warranted.

c. Violator's ability to pay:

MERONA has not provided sufficient information for the Regional Board to determine MERONA's ability to pay. The Regional Board feels that the civil liability is correctly assessed; therefore, a reduction in the civil liability is not warranted.

d. Effect on Permittee's ability to continue its business:

MERONA has not provided any information for the Regional Board to determine the impact that the proposed civil liability may have on the MERONA's ability to continue its business.

e. Voluntary cleanup efforts undertaken:

When the BMPs installed by MERONA failed to contain contaminated storm water runoff, MERONA did not take any voluntary efforts to cleanup the pollutants discharged from its construction site. Therefore, a reduction from the maximum civil liability is not warranted.

f. Prior history of violations:

A review of MERONA's Hooper Ave. construction project file indicates:

- i. On April March 4, 2003, an NOV was sent to MERONA for failure to pay the required 2002-2003 annual fee.
- ii. On May 21, 2003 an NOV was sent to MERONA for failure to have a SWPPP and for failure to implement effective BMPs at their construction site.
- iii. On February 26, 2004, an NOV was sent to MERONA for failure to pay the required 2003-2004 annual fees.

g. Degree of culpability:

MERONA partially complied with the terms of the General Permit by: (1) developing an incomplete SWPPP for a portion of their construction site, (2) by implementing BMPs at portions of their construction site. Therefore, a reduction from the maximum civil liability is warranted.

h. Economic benefit or savings:

To prepare a typical SWPPP for a construction site of this size and complexity, it costs an average of \$2000. In addition, economic savings from not implementing sediment control BMPs and lack of maintenance on at least 20% of the 7 acres of disturbed land is estimated at \$840. The breakdown of this amount is as follows:

1. 20% of 7 acres = 1.4 acres;
2. (1.4 acres) x (\$600 per acre of implementing BMPs)= \$840
3. \$840 is the amount that MERONA saved by not implementing and maintaining effective BMPs at the construction site.

i. Other matters as justice may require:

An additional matter to consider includes time spent by staff of the Regional Board in evaluating the incidents of violation and preparing this Complaint and related documents. The Regional Board charges a rate of \$70 per hour for staff

cost recovery. With total staff time of approximately 20 hours, staff costs incurred by the Regional Board is estimated to total \$1,400:

$$20 \text{ hours} \times \$70 \text{ per hour} = \$1,400$$

19. After consideration of the factors stated in §13385(e) of the CWC, and staff's lack of data to substantiate that fauna and flora exposed to the discharged pollutants were impaired, the Regional Board Executive Officer recommends that administrative civil liability be imposed by the Regional Board in the amount of \$14,240 which includes the following:
- a. Penalty of \$2,000 for not developing and implementing a complete SWPPP;
  - b. Penalty of \$840 for not implementing and not maintaining effective BMPs;
  - c. CWC Section 13385 penalty of \$10,000 for 05/06/03 and 2/17/04 violations; and
  - d. Reimbursement of \$1,400 in Regional Board staff costs (20 hours x \$70/hour).

#### RECOMMENDED CIVIL LIABILITY

<i>Penalty Category</i>	<i>Calculation</i>	<i>Total</i>
<b><i>Avoided cost SWPPP-Section A</i></b>	\$2000 for not developing and implementing a complete SWPPP for the entire 7-acre site	\$2000
<b><i>Avoided cost-Sections A.8., and A.11</i></b>	§A.8-(Sediment Control): for not implementing effective sediment control BMPs  §A.11 (Maintenance, Inspection, and Repair): for not maintaining the BMPs  The percentage of the total disturbed area (7 acres) that effective BMPs were not implemented is estimated to be 20%.  (1.4 acres)x(\$600/acres)	\$840
<b><i>Penalty</i></b>	5/6/03 and 2/17/04 violations-Section 13385 (\$5000 x 2)	\$10,000
<b><i>Reimbursement for Staff Costs</i></b>	Staff expended 20 hours x \$70/hour	\$1,400
<b>TOTAL RECOMMENDED PENALTY</b>		<b>\$14,240</b>

20. MERONA may waive its right to a hearing. Should MERONA choose to waive its right to a hearing, an authorized agent must sign the waiver form attached to this Complaint

and return the executed waiver to the Regional Board at 320 West 4<sup>th</sup> Street, Suite 200, Los Angeles, CA 90013, to be received by the Regional Board by the close of business on August 9, 2004. If the hearing is waived, in order to satisfy the civil liability, a check in the amount of \$14,240 (payable to the State Water Resources Control Board-Storm Water Account) shall accompany the signed waiver.

21. Regulations of the US Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act, including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

If MERONA has any questions, please contact Ejigu Solomon at (213) 620-2237 or Alex Alimohammadi at (213) 620-2243.

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Date

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Dennis A. Dickerson  
Executive Officer



**WAIVER OF THE RIGHT TO A HEARING**

By signing below and returning this Waiver, I hereby waive the right of MERONA to a hearing before the Regional Board to dispute the allegations and civil liability set forth in Administrative Civil Liability Complaint No. R4-2004-0050 (Complaint) issued by the Regional Board Executive Officer. MERONA understands that this Waiver gives up the rights to contest the allegations of the Complaint and the amount of civil liability it imposes

MERONA elects to pay the civil liability in the following manner:

Enclosed herewith in full payment of the civil liability is a \$14,240 check payable to 'State Water Resources Control Board Cleanup and Abatement Account.'

MERONA understands that this Waiver gives up the rights to argue against the allegations made by the Executive Officer in this Complaint and imposition of, and the amount of, civil liability imposed. MERONA also understands that if an Administrative Civil Liability Order is adopted by the Regional Board, payment in full will be due in thirty days after the date of the adoption of the Order.

I hereby affirm that I am duly authorized to act on behalf of and to bind MERONA in the making and giving of this Waiver.

MERONA

Date: \_\_\_\_\_

By: \_\_\_\_\_  
(Signed name)

\_\_\_\_\_  
(Printed or typed name)

Position: \_\_\_\_\_